

**BEFORE THE INDIANA CASE REVIEW PANEL**

In The Matter of T.S.	)	
Petitioner	)	
	)	
and	)	<b>CAUSE NO. 111109-82</b>
	)	
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-26-14 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

The Petitioner, T.S., attended Floyd Central High School (Floyd Central) until the end of his junior year, the end of the 2010-2011 school year. On August 18, 2011, the Petitioner enrolled at Charlestown High School (Charlestown) and began attending Charlestown for his senior year.

On August 24, 2011, Petitioner's father completed the student's portion of the Indiana High School Athletic Association (IHSAA) transfer report requesting full eligibility for the Petitioner. The reason listed on the IHSAA Transfer Report (Transfer Report) for the Petitioner's transfer was to allow the Petitioner to live with his grandfather.

On August 25, 2011, Floyd Central, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive limited eligibility under Rule 19-6.2 citing the transfer was without a change of residency by the Petitioner's parents and a waiver under Rule 17-8.5 was not sought. Also on August 25, 2011, Charlestown, the receiving school, completed its portion of the Transfer Report citing that Petitioner's transfer was a Rule 19-5 transfer and did not sign the rule 17-8.5 verification. On September 8, 2011, the Commissioner of the IHSAA determined that the Petitioner receive limited eligibility under Rule 19-6.2.

The Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility under Rule 19-6.2. The Review Committee conducted its hearing on October 24, 2011, and issued its decision on November 2, 2011. The decision upheld the Commissioner's determination of limited eligibility.

## **APPEAL TO THE CASE REVIEW PANEL**

Petitioner appealed to the Indiana Case Review Panel<sup>1</sup> on November 9, 2011. On November 16, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP. On November 22, 2011, the CRP held a meeting where a quorum of members was present.<sup>2</sup> In consideration of the record, the following Findings of Fact and Conclusions of Law were determined.

### **FINDINGS OF FACT**

1. While attending Floyd Central, the Petitioner participated in junior varsity baseball during his sophomore year and varsity baseball during his junior year.
2. On August 18, 2011, the Petitioner enrolled at Charlestown and began attending Charlestown for his senior year.
3. On August 24, 2011, Petitioner's father completed the student's portion of the IHSAA transfer report requesting full eligibility for the Petitioner. The reason listed on the Transfer Report for the Petitioner's transfer was to allow the Petitioner to live with his grandfather.
4. On August 25, 2011, Floyd Central, the sending school, completed its portion of the Transfer Report recommending that Petitioner receive limited eligibility under Rule 19-6.2 citing the transfer was without a change of residency by the Petitioner's parents and a waiver under Rule 17-8.5 was not sought.
5. Also on August 25, 2011, Charlestown, the receiving school, completed its portion of the Transfer Report citing that Petitioner's transfer was a Rule 19-5 transfer and did not sign the rule 17-8.5 verification.

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<sup>1</sup> The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

<sup>2</sup> Five members were present at the meeting, including Mr. Pat Mapes (chairperson), Mr. Earl Smith, Ms. Dana Cristee, Mr. Kevin Pempek and Mr. Matthew Rager. Ms. N. Renee Gallagher attended the meeting as counsel to the Panel.

6. On September 8, 2011, the Commissioner of the IHSAA determined that the Petitioner receive limited eligibility under Rule 19-6.2.
7. The Petitioner sought review by the IHSAA Review Committee of the Commissioner's determination and requested full eligibility under Rule 19-6.2.
8. The Review Committee conducted its hearing on October 24, 2011, and issued its decision on November 2, 2011. The decision upheld the Commissioner's determination of limited eligibility.
9. Petitioner appealed to the Indiana Case Review Panel<sup>3</sup> on October 17, 2011.
10. On October 26, 2011, the Panel notified the parties that the Panel would review the IHSAA Review Committee decision during a Panel meeting. The Panel requested and received the record from the IHSAA. The record was copied and provided to each participating member of the CRP.
11. On November 22, 2011, the CRP held a meeting where a quorum of members was present.

### **CONCLUSIONS OF LAW**

1. Although the IHSAA (Respondent) is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the Respondent analogous to a quasi-governmental entity. *IHSAA v. Carlberg*, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
2. The CRP is established by the Respondent to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The CRP has jurisdiction when a parent, guardian, or eligible student invokes the review function of the CRP. In the instant matter, the Respondent has rendered a final determination of student limited eligibility for one year, until May 19, 2012 to the Petitioner. Petitioner has timely sought review by the CRP.

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<sup>3</sup> The Case Review Panel (CRP) is a nine-member panel established by the IHSAA. The Superintendent appoints the members and his designee serves as the chairperson. The Panel reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision made by the IHSAA. I.C. § 20-26-14-6(c)(3).

3. The CRP has jurisdiction to review and determine this matter. The CRP is not limited by any by-law of Respondent. The CRP is authorized by statute to uphold, modify, or nullify the Respondent's adverse eligibility determination. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
4. The Panel is not required to review the IHSAA determination *de novo*. The Panel review is similar to an appellate-level administrative review. A full hearing to re-create the record is not required. The Panel is required to hold a "meeting," *I.C. 20-26-14-6(c)(2)*, not a hearing. The Panel is not required to collect testimony and information during the meeting but may collect testimony and information prior to the meeting. *See I.C. 20-26-14-6(c)(1)*. If the Panel upholds the IHSAA decision, a court of jurisdiction may consider the IHSAA decision, *I.C. 20-26-14-7(c)*, as opposed to the Panel decision. The IHSAA Review Committee hearing process provides students with due process protection. *Carlberg*, 694 N.E.2d at 241.
5. The Panel reviews the IHSAA determination for arbitrariness or capriciousness. *See Carlberg*, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." *Id.* citing *Dep't of Natural Resources v. Indiana Coal Council, Inc.*, 542 N.E.2d 1000, 1007 (Ind. 1989).

Additionally, the Panel reviews whether an IHSAA decision is:

not a fair and logical interpretation or application of the association's rule; . . . contrary to a constitutional right, power, privilege, or immunity; . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . without observance of procedure required by law; or . . . unsupported by substantial evidence.

*I.C. 20-26-14-7(c)*.

6. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.

7. Under IHSA Rule 19-6.2, a student who transfers without a corresponding change of residence by the student's parents will have limited eligibility at the new school.
8. Under IHSA Rule 17-8.1, the CRP "shall have the authority to set aside the effect of any Rule and grant a general waiver when the affected party establishes, by clear and convincing evidence, and to the reasonable satisfaction of the . . . CRP, that all of the following conditions are met: (a) Strict enforcement of the rule in the particular case will not serve to accomplish the primary purposes of the Rule; (b) The spirit of the Rule will not be offended or compromised by a waiver; (c) Unless waived, an undue harm or burden will be suffered by the affected party from enforcement of the Rule; and (d) When a student eligibility waiver is requested, a hardship condition . . . exists."
9. Under IHSA Rule 17-8.3, provides that a student seeking a general waiver must show that a hardship condition exists. A "hardship condition" is defined under Rule 17-8.3, in pertinent part, as an "extremely negative non-athletic condition, peculiar to the student, which is caused by unforeseen, unavoidable and uncorrectable events which is beyond the election, control or creation of the student, the student's family, the student's supporters, the student's coaches and the student's school, which causes the student to be ineligible or not fully eligible."
10. Transfer to Charlestown from Floyd Central was without a corresponding change of address of the parents however, there is clear and convincing evidence in the record to support the granting of a general waiver under Rule 17-8.1: There is clear and convincing evidence in the record that the facts of this case show the existence of an academic hardship. Petitioner showed three years of lackluster performance academically which prevented him from playing sports his freshman year. The parents' decision to move the Petitioner to a smaller educational setting in order to improve the Petitioner's grades was in the best interests of the student and not related or motivated by an interest in athletics. The parents chose to enroll the Petitioner in Charlestown, a smaller school, where he could live with his grandfather and have a short commute to school, in an effort to provide their son with the best chance possible to increase his grade point average and graduate high school. The record shows that the Petitioner's academic situation at Floyd Central was not managed well and credits "required" for graduation were noted as "recommended." There is evidence in the record that shows that, since

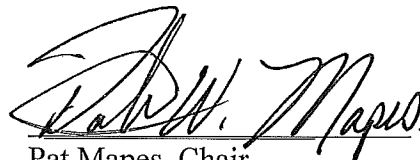
attending Charlestown, the Petitioner's attitude towards school and his grades have improved significantly. Limiting the Petitioner's eligibility to play sports as a result of his move to a smaller educational setting, particularly in his last year of high school, would not serve the purposes or spirit of the Rules in this case. There is no evidence in the record to support a finding that the Petitioner's transfer was for athletic reasons. There is clear and convincing evidence in the record to support that the move from Floyd Central to Charlestown was made due to an educational hardship. Therefore, a general waiver is granted due to the existence of an educational hardship condition.

11. The IHSAA decision to provide Petitioner with limited eligibility for one year was arbitrary and capricious and was not supported by substantial evidence. The compelling facts of this case support application of the general waiver under Rule 17-8.1 as the requirements of the Rule 17-8.3 are satisfied by clear and convincing evidence.
12. Therefore, the IHSAA Review Committee's determination that Petitioner transferred without a change of address and the transfer was for athletic purposes denying him a waiver is hereby **nullified** as clear and convincing evidence exists to support the existence of a hardship condition and the granting of a general waiver under Rule 17-8.1 and Rule 17-8.3 is merited. The Petitioner is granted **FULL ELIGIBILITY** immediately.

### **ORDER**

The IHSAA Review Committee order is hereby **NULLIFIED** by a vote of 5-0.  
Petitioner is granted **FULL ELIGIBILITY** immediately.

DATE: 11-30-11

  
Pat Mapes, Chair  
Case Review Panel

### **APPEAL RIGHT**

Any party aggrieved by the decision of the CRP has forty-five (45) days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 20-26-14-7.